

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

HOWELL W. WOLTZ,

Plaintiff,

v.

**THOMAS SCARANTINO,
Camp Administrator, *et al.*,**

Defendants.

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Civil Action No. 5:10-0095

ORDER

On March 17, 2010, Plaintiff filed a Motion for Appointment of Counsel. (Document No. 9.) Plaintiff requested that the Court appoint Mr. Arthur P. Strickland, a Virginia attorney with his office in Roanoke, to represent him in this matter. The appointment of counsel in a Bivens action is authorized by 28 U.S.C. § 1915(e)(1). (“The court may request an attorney to represent any person unable to afford counsel.”) There is no constitutional right to the appointment of counsel in civil cases, and the decision whether to appoint counsel is within the discretion of the Court. Appointment of counsel for indigent plaintiffs having claims under Bivens is required only in cases presenting complex issues or exceptional circumstances and the plaintiff’s ability to present the case is questionable. See Gordon v. Leeke, 574 F.2d 1147, 1153 (4th Cir. 1978) (“If it is apparent to the District Court that a pro se litigant has a colorable claim but lacks the capacity to present it, the district court should appoint counsel to assist him.”) Having examined the record in this case, the undersigned finds that the issues are not complex or exceptional and Plaintiff has presented them fully and adequately. The undersigned has also determined that Plaintiff has failed to state a claim under Bivens for which relief may be granted and recommended dismissal of this matter. For these reasons, Plaintiff’s Motion for Appointment of Counsel will be denied.

Plaintiff has also filed four Motions to Amend his Complaint to add Defendants (Document

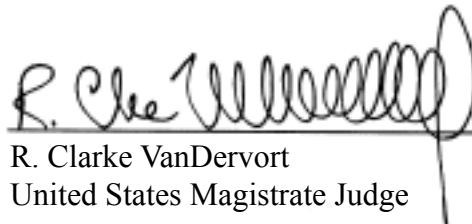
Nos. 14 (Warden Berkebile), 16 (Case Manager Smith), 19 (Commisary Officer Treadway) and 20 (Counselor Grimes, Medical Officer White, Officer Cutright, Supervising Attorney Stevens and Counselor Canterbury), and on August 17, 2010, he filed a letter requesting leave to file an Amended Complaint and his First Amended Complaint (Document Nos. 28 and 29.). The undersigned has considered Plaintiff's Motions to Amend and First Amended Complaint in determining whether this matter should be dismissed. For this reason, these Motions will be granted.

Plaintiff filed a Motion to Join Defendants and Serve Summonses on October 28, 2010. (Document No. 32.) Plaintiff requests that all of those persons named in his Motions to Amend (Warden Berkebile, Counselor Grimes, Medical Officer White, Officer Cutright, Supervising Attorney Stevens and Counselor Canterbury) be added as Defendants in this matter and that the Clerk issue Summonses to and serve these Defendants and those named initially. Plaintiff's Motion to Join Defendants duplicates his Motions to Amend and will be denied as those Motions will be granted. Because the undersigned has determined that this matter should be dismissed, Plaintiff's Motion to Serve Summonses will be denied.

It is therefore hereby Ordered that Plaintiff's Motion for Appointment of Counsel (Document No. 9.) is **DENIED**. Plaintiff's Motions to Amend to Add Defendants (Document Nos. 14, 16, 19 and 20.) and request for leave to file an Amended Complaint (Document No. 28.) are **GRANTED**. Plaintiff's Motion to Join Defendants and Serve Summonses (Document No. 32.) is **DENIED**.

The Clerk is directed to send a copy of this Order to Plaintiff who is acting *pro se*.

ENTER: January 31, 2011.


R. Clarke VanDervort
United States Magistrate Judge